



*Town of Walpole
Commonwealth of Massachusetts
Zoning Board of Appeals*

Matthew Zuker, Chairman
James S. DeCelle, Vice Chairman
Craig W. Hiltz, Clerk
Mary Jane Coffey, Member
Susanne Murphy, Member
Timothy C. Foley, Associate Member

August 17, 2016

DECISION - BOARD OF APPEALS CASE NO. 12-16

APPLICANT:
2140 Providence Highway, LLC

LOCATION OF PROPERTY INVOLVED:

2140 Boston-Providence Highway and shown on the Assessors Map as Lot Nos. 54-17, 54-17-1, and 54-17-2, Highway Business Zone and WRPOD Area 3.

APPLICATION FOR:

A **Special Permit** under Section 5-B, Table 5-B.1.1.d of the Zoning By-Laws to allows a private for-profit school within the existing building at 2140 Boston-Providence Highway.

On August 17, 2016 a Public Hearing was held in the Main Meeting Room of Town Hall for the purpose of receiving information and voting upon a decision as to the granting of a **Special Permit** to the 2140 Providence Highway, LLC.

The following members were present and voting:

Matthew Zuker, Chairman
Craig W. Hiltz, Clerk
Mary Jane Coffey, Member
Timothy C. Foley, Associate Member

The following members were not present:

James S. DeCelle, Vice Chairman
Susanne Murphy, Member

A motion was made by Matthew Zuker, seconded by Mary Jane Coffey, to close the public hearing. The vote was **(4-0-0) in favor** (Zuker, Hiltz, Coffey and Foley voting);

A motion was made by Timothy Foley, seconded by Matthew Zuker, on behalf of the applicant, grant a **Special Permit** under Section 5-B, Table 5-B.1.1.d of the Zoning By-Laws to allow a private for-profit school within the existing building at 2140 Boston-Providence Highway.

RECEIVED
16 AUG 23 PM 1:59
TOWN OF WALPOLE
TOWN CLERK

The vote was **(4-0-0) in favor** (Zuker, Hiltz, Coffey and Foley voting); therefore, the application for a **Special Permit** is hereby **granted, subject to the following conditions**:

CONDITIONS:

1. This special permit is for a Montessori or similar school to be located within the existing building at 2140 Boston-Providence Highway. The addition of a second school to the building would require a separate special permit.
2. The Applicant shall work with the other condominium owners to install appropriate traffic safety signage advising drivers within the overall site to drive carefully given the presence of children in both this facility and the Rodman Ice Arena facility.

REASONS FOR DECISION

The Board finds that the proposed Montessori school to be located within the existing building at 2140 Boston-Providence Highway requires a **Special Permit** under Section 5-B, Table 5-B.1.1.d of the Zoning By-Law. It is the further finding of the Board that there are no specific requirements under Section 5-B, Table 5-B.1.1.d for the granting of said **Special Permit**.

FURTHER FINDINGS

It is the finding of the Board that the applicant was able to meet the requirements of Section 2.2.B of the Zoning Bylaws, which requires that:

(1) Prior to granting a special permit, the SPGA shall make a finding and determination that the proposed use, building, structure, sign, parking facility or other activity which is the subject of the application for the special permit:

(a) Does and shall comply with such criteria or standards as shall be set forth in in the section of this Bylaw which refers to the granting of the requested special permit;

As noted above, there are no specific requirements under Section 5-B, Table 5-B.1.1.d of the Zoning By-Law for this type of use.

(b) Shall not have vehicular and pedestrian traffic of a type and quantity so as to adversely affect the immediate neighborhood;

The Board finds that the proposed school will be located within an existing commercial building with direct access to Route 1. The site already has existing driveways, parking areas and pedestrian facilities. The proposed use will not generate significant number of vehicle trips as compared to the typical daily traffic rates on Route 1 and will therefore not create a negative traffic or pedestrian impact. The area immediately around the existing building has 101 parking spaces, which are more than adequate for the proposed use. As part of the condominium association, the building has access to the other parking spaces around the Rodman Arena site as well. Based on these facts, along with the condition requiring the installation of traffic safety signage, the Board therefore finds that this requirement is met.

- (c) Shall not have a number of residents, employees, customers, or visitors so as to adversely affect the immediate neighborhood;***

The Board finds that the activity will occur with the existing commercial building and will not be more intensive than uses normally occurring in such settings. As such, the proposed use will not have a number of residents, employees, customers or visitors so as to adversely affect the immediate commercial neighborhood and this requirement is therefore met.

- (d) Shall comply with the dimensional requirements applicable to zoning district in which the premises is located, including, without limitation, the applicable lot coverage and buffer zone requirements in Section 5-G;***

The Board finds that the proposed use will occur within an existing commercial building that has been previously permitted. This requirement is therefore met.

- (e) Shall not be dangerous to the immediate neighborhood of the premises through fire, explosion, emission of wastes, or other causes;***

The Board finds that private schools are not known to be typically associated with fire, explosions, or the emissions of unusual waste materials. As such, the Board finds that this criterion is met.

- (f) Shall not create such noise, vibration, dust, heat, smoke, fumes, odor, glare or other nuisance or serious hazard so as to adversely affect the immediate neighborhood;***

The Board finds that private schools are not known to be typically associated with noise, vibration, dust, heat, smoke, fumes, odor, glare or other nuisance or serious hazard which would adversely affect the immediate neighborhood. As such, the Board finds that this criterion is met.

- (g) Shall not adversely effect the character of the immediate neighborhood; and***

The Board finds that the property in question lies within a commercial building on Route 1 in the Highway Business Zoning District. The Board further finds that the Rodman Ice Arena includes many youth programs, which are consistent with the use of a private, for-profit school on the site. The Board therefore finds that the proposed use of a private, for-profit school is consistent with such an environment and that this criterion is therefore met.

- (h) Shall not be incompatible with the purpose of the zoning Bylaw or the purpose of the zoning district in which the premises is located.***

The Board finds that the proposed use of a private school is an appropriate use for a commercial building within the Highway Business Zoning District and that this criterion is met.

* * * * *

Consistency: This decision is consistent with purpose and intent of the Zoning By-laws.

The grant of relief under this decision is limited to the relief expressly granted hereunder; and any other relief sought is hereby denied.

* * * * *

Said Special Permit is granted pursuant to Massachusetts General Laws c. 40A, s.9 which provides in pertinent part as follows:

"...special permits granted under this section shall lapse within a specified period of time, not more than two years, which shall not include such time required to pursue or await the determination of an appeal referred to in section seventeen, from the grant thereof, if a substantial use thereof has not sooner commenced except for good cause or, in the case of permit for construction, if construction has not begun by such date except for good cause."

Massachusetts General Laws c. 40A, s. 11. provides in pertinent part as follows:

"A special permit, or any extension, modification or renewal thereof, shall not take effect until a copy of the decision bearing the certification of the city or town clerk that 20 days have elapsed after the decision has been filed in the office of the city or town clerk and either that no appeal has been filed or the appeal has been filed within such time, or if it is a special permit which has been approved by reason of the failure of the permit granting authority or special permit granting authority to act thereon within the time prescribed, a copy of the application for the special permit-accompanied by the certification of the city or town clerk stating the fact that the permit granting authority or special permit granting authority failed to act within the time prescribed, and whether or not an appeal has been filed within that time, and that the grant of the application resulting from the failure to act has become final, is recorded in the registry of deeds for the county and district in which the land is located and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The person exercising rights under a duly appealed special permit does so at risk that a court will reverse the permit and that any construction performed under the permit may be ordered undone. This section shall in no event terminate or shorten the tolling, during the pendency of any appeals, of the 6 month periods provided under the second paragraph of section 6. The fee for recording or registering shall be paid by the owner or applicant."

MASSACHUSETTS GENERAL LAWS c. 40A, s. 15 PROVIDES THAT APPEALS FROM A DECISION OF A BOARD OF APPEALS SHALL BE MADE PURSUANT TO SECTION 17 OF c 40A AND SHALL BE FILED WITHIN TWENTY DAYS AFTER THE DATE OF FILING OF THE NOTICE OF DECISION IN THE OFFICE OF THE CITY OR TOWN CLERK.

WALPOLE ZONING BOARD OF APPEALS

Matthew Zuker, Chairman

MZ/k:16-22

cc: Town Clerk Engineering Planning Board
 Board of Selectmen Building Inspector Conservation Commission

This decision was made on August 17, 2016 and filed with the Town Clerk on August 23, 2016.